

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

MICHAEL LENA,

Plaintiff,

No. C 13-4024 EDL (PR)

v.

**ORDER DISMISSING WITH  
LEAVE TO AMEND**

KEVIN CHAPPELL, et. al.,

Defendant.

Plaintiff, a state prisoner currently incarcerated at San Quentin State Prison, has filed a pro se civil rights complaint under 42 U.S.C. § 1983. He has been granted leave to proceed in forma pauperis.

**DISCUSSION**

**A. Standard of Review**

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). In its review the court must identify any cognizable claims, and dismiss any claims which are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek monetary relief from a defendant who is immune from such relief. *Id.* at 1915A(b)(1),(2). Pro se pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990).

Federal Rule of Civil Procedure 8(a)(2) requires only "a short and plain statement of the claim showing that the pleader is entitled to relief." "Specific facts are not necessary; the statement need only "give the defendant fair notice of what the . . . claim is and the grounds upon which it rests."" *Erickson v. Pardus*, 551 U.S. 89, 93 (2007) (citations omitted). Although in order to state a claim a complaint "does not need detailed factual

1 allegations, . . . a plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief'  
2 requires more than labels and conclusions, and a formulaic recitation of the elements of a  
3 cause of action will not do. . . . Factual allegations must be enough to raise a right to relief  
4 above the speculative level." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)  
5 (citations omitted). A complaint must proffer "enough facts to state a claim to relief that is  
6 plausible on its face." *Id.* at 570. The United States Supreme Court has recently explained  
7 the "plausible on its face" standard of *Twombly*: "While legal conclusions can provide the  
8 framework of a complaint, they must be supported by factual allegations. When there are  
9 well-pleaded factual allegations, a court should assume their veracity and then determine  
10 whether they plausibly give rise to an entitlement to relief." *Ashcroft v. Iqbal*, 556 U.S. 662,  
11 679 (2009).

12 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential  
13 elements: (1) that a right secured by the Constitution or laws of the United States was  
14 violated, and (2) that the alleged deprivation was committed by a person acting under the  
15 color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988).

#### 16 **B. Legal Claims**

17 Plaintiff states that prison officials have obstructed his attempts to file legal actions.

18 Prisoners have a constitutional right of access to the courts. *See Lewis v. Casey*,  
19 518 U.S. 343, 350 (1996); *Bounds v. Smith*, 430 U.S. 817, 821 (1977). To establish a  
20 claim for any violation of the right of access to the courts, the prisoner must prove that there  
21 was an inadequacy in the prison's legal access program that caused him an actual injury.  
22 *See Lewis*, 518 U.S. at 350-55. To prove an actual injury, the prisoner must show that the  
23 inadequacy in the prison's program hindered his efforts to pursue a non-frivolous claim  
24 concerning his conviction or conditions of confinement. *See id.* at 354-55.

25 Plaintiff alleges that prison officials have obstructed his efforts to file habeas and civil  
26 rights cases by preventing him from properly completing the in forma pauperis applications.  
27 Plaintiff has been attempting to challenge his placement in Administrative Segregation.  
28

1 Plaintiff also alleges obstruction in his attempts to exhaust claims through the inmate  
2 grievance system. Plaintiff states that prison officials have a habit of preventing inmates  
3 from filing cases by not completing the necessary forms for in forma pauperis applications  
4 and by not properly processing inmate appeals. Other than stating that his attempts to  
5 have the forms completed have been thwarted, plaintiff provides few details and identifies  
6 no individual defendants. Nor has plaintiff described his other habeas and civil rights cases  
7 in sufficient detail to demonstrate they were non-frivolous. The only relief plaintiff seeks in  
8 this action is for the prison to stop hampering efforts at litigation. He seeks no specific relief  
9 regarding his placement in Administrative Segregation. The case will be dismissed with  
10 leave to amend for plaintiff to provide more specific information and identify individual  
11 defendants.<sup>1</sup>

### 12 CONCLUSION

13 1. The complaint is **DISMISSED** with leave to amend in accordance with the  
14 standards set forth above. The amended complaint must be filed within **twenty-eight (28)**  
15 **days** of the date this order is filed and must include the caption and civil case number used  
16 in this order and the words AMENDED COMPLAINT on the first page. Because an  
17 amended complaint completely replaces the original complaint, plaintiff must include in it all  
18 the claims he wishes to present. See *Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir.  
19 1992). He may not incorporate material from the original complaint by reference. Failure to  
20 amend within the designated time will result in the dismissal of this action.

21 2. It is the plaintiff's responsibility to prosecute this case. Plaintiff must keep the  
22 court informed of any change of address by filing a separate paper with the clerk headed  
23 "Notice of Change of Address," and must comply with the court's orders in a timely fashion.  
24 Failure to do so may result in the dismissal of this action for failure to prosecute pursuant to  
25 Federal Rule of Civil Procedure 41(b).

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27 <sup>1</sup> The court also notes that it routinely receives proper applications to proceed in forma  
28 pauperis from prisoners at San Quentin State Prison who have also exhausted their claims.

**IT IS SO ORDERED.**

Dated: November 1, 2013.

  
ELIZABETH D. LAPORTE  
United States Chief Magistrate Judge

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KEVIN CHAPELL et al,

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Case Number: CV13-04024 EDL


**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on November 1, 2013, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Michael Angelo Lena #AN9206  
San Quentin State Prison  
537 Carson  
San Quentin, CA 94974

Dated: November 1, 2013

  
Richard W. Wieking, Clerk  
By: Lisa R Clark, Deputy Clerk